

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TEXARKANA DIVISION

DONALD COLUMBUS REED	§	
v.	§	CIVIL ACTION NO. 5:07cv88
NANCY TALLEY, ET AL.	§	

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION  
OF THE UNITED STATES MAGISTRATE JUDGE  
AND ENTERING FINAL JUDGMENT

The Plaintiff Donald Reed, proceeding *pro se*, filed this civil rights lawsuit under 42 U.S.C. §1983 complaining of alleged violations of his constitutional rights. This Court ordered that the matter be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

Reed names Bowie County Justice of the Peace Nancy Talley, Texarkana police officer Charles Kriedler, and a private citizen named Lloyd Green as Defendants in his lawsuit. He asserts that Judge Talley acted in the complete absence of jurisdiction by awarding a car to Lloyd Green that Reed had purchased. Reed says in his amended complaint that he was convicted of theft of property from Green, but that the car was not part of the property which was allegedly stolen and was not part of the theft prosecution. Green has been dismissed from the lawsuit, and this Court has previously recommended that Officer Kriedler be dismissed as well, leaving only Reed's claims against Judge Talley.

The Magistrate Judge ordered Judge Talley to answer the lawsuit, based on Reed's contention that Judge Talley was acting wholly outside of her jurisdiction and thus not shielded by judicial immunity. The parties have filed cross-motions for summary judgments as well as responses to the opposing motions.

After review of the pleadings and competent summary judgment evidence, the Magistrate Judge issued a Report recommending that the Defendant's motion for summary judgment be granted. The Magistrate Judge rejected Judge Talley's contentions concerning the statute of limitations and exhaustion of administrative remedies, but concluded that Judge Talley was shielded by judicial immunity because in awarding the car to Green, she was conducting a judicial proceeding pursuant to Article 47.01a(a)(1) of the Texas Code of Criminal Procedure. The Magistrate Judge specifically said that whether Judge Talley's decision was right or wrong was not the issue in the present case; rather, the question before the federal district court in this lawsuit was whether or not Judge Talley had jurisdiction to make the decision which she did, and the Magistrate Judge concluded that she did have jurisdiction because she was acting pursuant to a state statute. Consequently, the Magistrate Judge determined that Judge Talley was shielded by judicial immunity and so recommended that Reed's lawsuit be dismissed.

Reed filed objections to the Magistrate Judge's Report on June 16, 2008. In his objections, Reed complains that he was deprived of property by Judge Talley's actions, that he was denied due process, that material issues of fact exist precluding summary judgment, including whether or not the statute of limitations had run, whether or not he had any available administrative remedies, and the propriety of the award of the car to Green, and that Judge Talley mis-applied the Texas statute. Reed's objections offer nothing to controvert the Magistrate Judge's conclusion that Judge Talley was entitled to the defense of judicial immunity and are without merit.

The Court has conducted a careful *de novo* review of all of the documents in this cause, including the Plaintiff's complaint and pleadings, the motions for summary judgment and responses filed by the parties, the competent summary judgment evidence, the Report of the Magistrate Judge, the Plaintiff's objections thereto, and all other pleadings, documents, and records in the case. Upon such *de novo* review, the Court has concluded that the Report of the Magistrate Judge is correct and that the Plaintiff's objections are without merit. It is accordingly

ORDERED that the Plaintiff's objections are overruled and that the Report of the Magistrate Judge is ADOPTED as the opinion of the District Court. It is further

ORDERED that the Defendant Judge Nancy Talley's motion for summary judgment is GRANTED and that the Defendant Nancy Talley be and hereby is DISMISSED from this lawsuit with prejudice. Inasmuch as all other Defendants have already been dismissed, it is further

ORDERED that the above-styled lawsuit be and hereby is DISMISSED with prejudice. Finally, it is

ORDERED that any and all motions which may be pending in this cause, including but not limited to the Plaintiff's "motion to stay the mandate" and motion for summary judgment, are hereby DENIED.

**SIGNED this 3rd day of July, 2008.**

A handwritten signature in black ink, appearing to read "David Folsom", written over a horizontal line.

DAVID FOLSOM  
UNITED STATES DISTRICT JUDGE